

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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<b>JACK E. FEINBERG,</b>	:	<b>CIVIL ACTION</b>
	:	
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	<b>NO. 11-5434</b>
	:	
<b>AMERICAN EXPRESS COMPANY,</b>	:	
	:	
<b>Defendant.</b>	:	

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**ORDER**

**AND NOW**, this 7th day of October, 2011, upon consideration of Defendant American Express Company's Motion to Dismiss (Document No. 5, filed September 6, 2011), Plaintiff's Memorandum of Law in Opposition to Defendant's Rule 12(b)(6) Motion to Dismiss Plaintiff's Complaint (Document No. 6, filed September 21, 2011), and Defendant American Express Company's Motion for Leave to File a Reply Brief and the attached Defendant American Express Company's Reply Brief in Support of its Motion to Dismiss (Document No. 13, filed October 5, 2011), for the reasons set forth in the Memorandum of October 7, 2011, **IT IS ORDERED** that Defendant American Express Company's Motion to Dismiss is **GRANTED IN PART** and **DENIED IN PART**, as follows:

1. With respect Count One, plaintiff's negligence claim, the motion is **DENIED** without prejudice to defendant's right to raise the issue presented in that motion after completion of discovery by motion for summary judgment and/or at trial;
2. With respect to Count Two, plaintiff's claim for punitive damages, the motion is

**GRANTED**, and the Court amends Count One so as to include a claim for punitive damages.

**BY THE COURT:**

/s/ Jan E. DuBois  
**JAN E. DUBOIS, J.**